

By: Schwertner

S.B. No. 1874

A BILL TO BE ENTITLED

AN ACT

relating to the operation of certain infrastructure during a weather emergency; authorizing administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 81.073(b), Natural Resources Code, as added by Chapter 426 (S.B. 3), Acts of the 87th Legislature, Regular Session, 2021, is amended to read as follows:

(b) The rules must:

(1) establish criteria for designating persons who own or operate a facility under the jurisdiction of the commission under Section 81.051(a) or engage in an activity under the jurisdiction of the commission under Section 81.051(a) who must provide critical customer and critical gas supply information, as defined by the commission, to the entities described by Section 38.074(b)(1), Utilities Code; and

(2) consider essential operational elements when defining critical customer designations and critical gas supply information for the purposes of Subdivision (1), including:

(A) natural gas production, processing, and transportation and~~[7]~~ related produced water handling and disposal;

(B) the net load of electricity required for a facility;

(C) the ability of an operator to reduce demand

1 from a facility in response to an instruction issued by an
2 independent system operator, as defined by Section 31.002,
3 Utilities Code; ~~facilities,~~ and

4 (D) the delivery of natural gas to generators of
5 electric energy ~~and~~

6 ~~[(3) require that only facilities and entities that~~
7 ~~are prepared to operate during a weather emergency may be~~
8 ~~designated as a critical customer under this section].~~

9 SECTION 2. Sections 86.044(d), (f), and (g), Natural
10 Resources Code, are amended to read as follows:

11 (d) The commission shall:

12 (1) inspect gas supply chain facilities for compliance
13 with rules adopted under Subsection (c); and

14 (2) provide the owner of a facility described by
15 Subdivision (1) with a reasonable period of time in which to remedy
16 any violation the commission discovers in an inspection ~~and~~

17 ~~[(3) report to the attorney general any violation that~~
18 ~~is not remedied in a reasonable period of time].~~

19 (f) The commission by rule shall require an operator of a
20 gas supply chain facility that experiences repeated
21 weather-related or major weather-related forced interruptions of
22 production to:

23 (1) ~~[contract with a person who is not an employee of~~
24 ~~the operator to]~~ assess the operator's weatherization plans,
25 procedures, and operations and propose remedial measures; and

26 (2) submit the assessment and remedial measures to the
27 commission.

1 (g) The commission may require an operator of a gas supply
2 chain facility to implement remedial measures [~~appropriate~~
3 ~~recommendations included in an assessment~~] submitted to the
4 commission under Subsection (f) if the commission determines the
5 remedial measures are necessary for compliance with rules adopted
6 under Subsection (c).

7 SECTION 3. Section [86.223](#), Natural Resources Code, is
8 amended to read as follows:

9 Sec. 86.223. SUIT FOR PENALTY. The penalty authorized by
10 Section [86.222](#) may be recovered with the cost of suit by the State
11 of Texas through the attorney general or the county or district
12 attorney when joined by the attorney general in a civil action
13 instituted in Travis County, in the county in which the violation
14 occurred, or in the county of residence of the defendant.

15 SECTION 4. Subchapter [G](#), Chapter [86](#), Natural Resources
16 Code, is amended by adding Section 86.2235, and a heading is added
17 to that section to read as follows:

18 Sec. 86.2235. WEATHER EMERGENCY PREPAREDNESS PENALTIES.

19 SECTION 5. Sections [86.222](#)(a-1), (c), and (d), Natural
20 Resources Code, are transferred to Section 86.2235, Natural
21 Resources Code, as added by this Act, redesignated as Sections
22 86.2235(a), (b), (c), and (d), Natural Resources Code, and amended
23 to read as follows:

24 (a) Section [86.222](#) does not apply to a violation
25 [~~(a-1) Notwithstanding Subsection (a), a person who violates a~~
26 ~~provision~~] of a rule adopted under Section [86.044](#). If the
27 commission determines that a person has violated a rule adopted

1 under Section 86.044, the commission shall assess a penalty against
2 the person in the manner provided by Sections 81.0532-81.0534 for
3 assessing an administrative penalty under Section 81.0531.

4 (b) The penalty may not exceed ~~[is liable for a penalty of~~
5 ~~not more than]~~ \$1,000,000 for each offense. Each day a violation
6 occurs constitutes a separate offense.

7 (c) The commission by rule shall establish a classification
8 system to be used ~~[by a court under this subchapter]~~ for violations
9 of rules adopted under Section 86.044 that includes a range of
10 penalties that may be recovered for each class of violation based
11 on:

- 12 (1) the seriousness of the violation, including:
13 (A) the nature, circumstances, extent, and
14 gravity of a prohibited act; and
15 (B) the hazard or potential hazard created to the
16 health, safety, or economic welfare of the public;
17 (2) the history of previous violations;
18 (3) the amount necessary to deter future violations;
19 (4) efforts to correct the violation; and
20 (5) any other matter that justice may require.

21 (d) The classification system established under Subsection
22 (c) shall provide that a penalty in an amount that exceeds \$5,000
23 may be recovered only if the violation is included in the highest
24 class of violations in the classification system.

25 SECTION 6. Section 86.2235, Natural Resources Code, as
26 added by this Act, is amended by adding Subsection (e) to read as
27 follows:

1 (e) Notwithstanding Subsection (a), the commission may not
2 assess a penalty against an operator of a facility for a violation
3 of a rule adopted under Section 86.044 if the commission determines
4 that the operator made reasonably prudent efforts to comply with
5 the rule, regardless of whether the facility failed to operate
6 during a weather emergency.

7 SECTION 7. Section 38.202(f), Utilities Code, is amended to
8 read as follows:

9 (f) Information written, produced, collected, assembled, or
10 maintained under law or in connection with the transaction of
11 official business by the committee or an officer or employee of the
12 committee is subject to Section 552.008, Government Code, including
13 information that is confidential under Section 418.181, Government
14 Code. This subsection does not apply to the physical locations of
15 critical facilities, maps created under this subchapter, or
16 proprietary information created or gathered during the mapping
17 process.

18 SECTION 8. Section 38.203(d), Utilities Code, is amended to
19 read as follows:

20 (d) Except as provided by Section 38.202(f):

21 (1) the [The] information maintained in the database
22 is confidential under Section 418.181, Government Code, and not
23 subject to disclosure under Chapter 552, Government Code; and

24 (2) portions of documents in the possession of the
25 committee that are confidential under Section 418.181, Government
26 Code, are not subject to disclosure under Chapter 552, Government
27 Code.

1 SECTION 9. Subchapter F, Chapter 38, Utilities Code, is
2 amended by adding Section 38.205 to read as follows:

3 Sec. 38.205. NOTICE AND HEARING BEFORE ADDING NATURAL GAS
4 FACILITY TO MAP. (a) The committee may include on the electricity
5 supply chain map a gas supply chain facility, as defined by Section
6 86.044, Natural Resources Code, or a gas pipeline facility
7 described by Section 121.2015, only after the committee provides
8 the operator of the facility with notice and an opportunity for a
9 contested case hearing in the manner provided by Chapter 2001,
10 Government Code. If the operator requests a hearing, the committee
11 shall refer the matter to the Railroad Commission of Texas for the
12 hearing.

13 (b) The Railroad Commission of Texas shall hold the
14 contested case hearing and issue a decision in writing in
15 accordance with Chapter 2001, Government Code, as to whether the
16 facility may be included on the electricity supply chain map based
17 on applicable rules and provisions of this code and the Natural
18 Resources Code.

19 (c) The committee shall comply with the decision issued by
20 the Railroad Commission of Texas.

21 SECTION 10. The following provisions are repealed:

22 (1) Section 86.044(h), Natural Resources Code; and

23 (2) Section 186.008, Utilities Code.

24 SECTION 11. Section 38.205, Utilities Code, as added by
25 this Act, applies only to the addition of a gas supply chain
26 facility or gas pipeline facility to the electricity supply chain
27 map under Subchapter F, Chapter 38, Utilities Code, on or after the

1 effective date of this Act.

2 SECTION 12. This Act takes effect September 1, 2023.